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SENATE BILL 1108

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Linda M Lopez

AN ACT

RELATING TO SEX OFFENDERS; CREATING A NEW CRIMINAL OFFENSE  
KNOWN AS CHILD SOLICITATION BY ELECTRONIC COMMUNICATION  
DEVICE; ADDING THE OFFENSE OF CHILD SOLICITATION BY ELECTRONIC  
COMMUNICATION DEVICE TO SEX OFFENDER REGISTRATION  
REQUIREMENTS; PROVIDING AN EXTENDED PERIOD OF PAROLE FOR THE  
OFFENSE OF CHILD SOLICITATION BY ELECTRONIC COMMUNICATION  
DEVICE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 29-11A-3 NMSA 1978 (being Laws 1995,  
Chapter 106, Section 3, as amended) is amended to read:

"29-11A-3. DEFINITIONS. -- As used in the Sex Offender  
Registration and Notification Act:

A. "conviction" means a conviction in any court of  
competent jurisdiction and includes a deferred sentence, but

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1 does not include a conditional discharge;

2 B. "institution of higher education" means a:

3 (1) private or public post-secondary  
4 educational institution;

5 (2) trade school; or

6 (3) professional school;

7 C. "registration requirement" means any  
8 requirement set forth in Section 29-11A-4 NMSA 1978 that  
9 requires a sex offender to register, provide information,  
10 including a DNA sample, renew, revise or change [~~his~~]  
11 registration information or provide written notice or  
12 disclosure regarding [~~his~~] the sex offender's status as a sex  
13 offender;

14 D. "sex offender" means a person who:

15 (1) is a resident of New Mexico who is  
16 convicted of a sex offense in New Mexico;

17 (2) changes [~~his~~] residence to New Mexico,  
18 when that person has been convicted of a sex offense in  
19 another state pursuant to state, federal, tribal or military  
20 law;

21 (3) is a resident of New Mexico who is  
22 convicted of a sex offense pursuant to federal, tribal or  
23 military law;

24 (4) does not have an established residence in  
25 New Mexico, but lives in a shelter, halfway house or

1 transitional living facility or stays in multiple locations in  
2 New Mexico and who has been convicted of a sex offense in New  
3 Mexico or any other state pursuant to state, federal, tribal  
4 or military law; or

5 (5) is a resident of another state and who  
6 has been convicted of a sex offense pursuant to state,  
7 federal, tribal or military law, but who is:

8 (a) employed full time or part time in  
9 New Mexico for a period of time exceeding fourteen days or for  
10 an aggregate period of time exceeding thirty days during any  
11 calendar year, including any employment or vocation, whether  
12 financially compensated, volunteered or for the purpose of  
13 government or educational benefit; or

14 (b) enrolled on a full-time or part-  
15 time basis in a private or public school or an institution of  
16 higher education in New Mexico; and

17 E. "sex offense" means:

18 (1) criminal sexual penetration in the first,  
19 second, third or fourth degree, as provided in Section 30-9-11  
20 NMSA 1978;

21 (2) criminal sexual contact in the fourth  
22 degree, as provided in Section 30-9-12 NMSA 1978;

23 (3) criminal sexual contact of a minor in the  
24 second, third or fourth degree, as provided in Section  
25 30-9-13 NMSA 1978;

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1 (4) sexual exploitation of children, as  
2 provided in Section 30-6A-3 NMSA 1978;

3 (5) sexual exploitation of children by  
4 prostitution, as provided in Section 30-6A-4 NMSA 1978;

5 (6) kidnapping, as provided in Section  
6 30-4-1 NMSA 1978, when the victim is less than eighteen years  
7 of age and the offender is not a parent of the victim;

8 (7) false imprisonment, as provided in  
9 Section 30-4-3 NMSA 1978, when the victim is less than  
10 eighteen years of age and the offender is not a parent of the  
11 victim;

12 (8) aggravated indecent exposure, as provided  
13 in Section 30-9-14.3 NMSA 1978;

14 (9) enticement of child, as provided in  
15 Section 30-9-1 NMSA 1978;

16 (10) incest, as provided in Section 30-10-3  
17 NMSA 1978, when the victim is less than eighteen years of age;

18 (11) child solicitation by electronic  
19 communication device, as provided in Section 30-37-3.2 NMSA  
20 1978;

21 [~~(11)~~] (12) solicitation to commit criminal  
22 sexual contact of a minor in the second, third or fourth  
23 degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;  
24 or

25 [~~(12)~~] (13) attempt to commit any of the sex

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1 offenses set forth in Paragraphs (1) through [~~(10)~~] (11) of  
2 this subsection, as provided in Section 30-28-1 NMSA 1978. "

3 Section 2. Section 30-37-3.2 NMSA 1978 (being Laws 1998,  
4 Chapter 64, Section 1, as amended) is amended to read:

5 "30-37-3.2. CHILD SOLICITATION BY [~~COMPUTER~~] ELECTRONIC  
6 COMMUNICATION DEVICE. --

7 A. Child solicitation by [~~computer~~] electronic  
8 communication device consists of a person knowingly and  
9 intentionally soliciting a child under sixteen years of age,  
10 by means of [~~computer~~] an electronic communication device, to  
11 engage in sexual intercourse, sexual contact or in a sexual or  
12 obscene performance, or to engage in any other sexual conduct  
13 when the perpetrator is at least three years older than the  
14 child.

15 B. Whoever commits child solicitation by  
16 [~~computer~~] electronic communication device is guilty of a  
17 [~~fourth~~] third degree felony, except the person is guilty of a  
18 second degree felony if the person also attends or is present  
19 at a meeting that the person arranged pursuant to the  
20 solicitation.

21 [~~B.-~~] C. In a prosecution for child solicitation by  
22 [~~computer~~] electronic communication device, it is not a  
23 defense that the intended victim of the defendant was a peace  
24 officer posing as a child under sixteen years of age.

25 [~~C.-~~] D. For purposes of determining jurisdiction,

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1 child solicitation by [~~computer~~] electronic communication  
2 device is committed in this state if [~~a computer~~] an  
3 electronic communication device transmission either originates  
4 or is received in this state.

5 E. As used in this section, "electronic  
6 communication device" means a computer, video recorder,  
7 digital camera, fax machine, telephone, pager, audio equipment  
8 or any other device that can produce an electronically  
9 generated image, message or signal. "

10 Section 3. Section 31-21-10.1 NMSA 1978 (being Laws 2003  
11 (1st S.S.), Chapter 1, Section 9) is amended to read:

12 "31-21-10.1. SEX OFFENDERS--PERIOD OF PAROLE--TERMS AND  
13 CONDITIONS OF PAROLE.--

14 A. If the district court sentences a sex offender  
15 to a term of incarceration in a facility designated by the  
16 corrections department, the district court shall include a  
17 provision in the judgment and sentence that specifically  
18 requires the sex offender to serve an indeterminate period of  
19 supervised parole for a period of not less than five years and  
20 not in excess of twenty years. A sex offender's period of  
21 supervised parole may be for a period of less than twenty  
22 years if, at a review hearing provided for in Subsection B of  
23 this section, the state is unable to prove that the sex  
24 offender should remain on parole. Prior to placing a sex  
25 offender on parole, the board shall conduct a hearing to

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1 determine the terms and conditions of supervised parole for  
2 the sex offender. The board may consider any relevant  
3 factors, including:

4 (1) the nature and circumstances of the  
5 offense for which the sex offender was incarcerated;

6 (2) the nature and circumstances of a prior  
7 sex offense committed by the sex offender;

8 (3) rehabilitation efforts engaged in by the  
9 sex offender, including participation in treatment programs  
10 while incarcerated or elsewhere;

11 (4) the danger to the community posed by the  
12 sex offender; and

13 (5) a risk and needs assessment regarding the  
14 sex offender, developed by the sex offender management board  
15 of the New Mexico sentencing commission or another appropriate  
16 entity, to be used by appropriate parole board personnel.

17 B. The board shall review the terms and conditions  
18 of a sex offender's supervised parole at two and one-half year  
19 intervals. When a sex offender has served the initial five  
20 years of supervised parole, the board shall also review the  
21 duration of the sex offender's supervised parole at two and  
22 one-half year intervals. When a sex offender has served the  
23 initial five years of supervised parole, at each review  
24 hearing the state shall bear the burden of proving to a  
25 reasonable certainty that the sex offender should remain on

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1 parole.

2 C. The board may order a sex offender released on  
3 parole to abide by reasonable terms and conditions of parole,  
4 including:

5 (1) being subject to intensive supervision by  
6 a parole officer of the corrections department;

7 (2) participating in an outpatient or  
8 inpatient sex offender treatment program;

9 (3) a parole agreement by the sex offender  
10 not to use alcohol or drugs;

11 (4) a parole agreement by the sex offender  
12 not to have contact with certain persons or classes of  
13 persons; and

14 (5) being subject to alcohol testing, drug  
15 testing or polygraph examinations used to determine if the sex  
16 offender is in compliance with the terms and conditions of  
17 [his] the sex offender's parole.

18 D. The board shall notify the chief public  
19 defender of an upcoming parole hearing for a sex offender, and  
20 the chief public defender shall make representation available  
21 to the sex offender at the parole hearing.

22 E. If the board finds that a sex offender has  
23 violated the terms and conditions of [his] the sex offender's  
24 parole, the board may revoke [his] the sex offender's parole  
25 or may order additional terms and conditions of parole.

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1 F. The provisions of this section shall apply to  
2 all sex offenders, except geriatric, permanently incapacitated  
3 and terminally ill inmates eligible for the medical and  
4 geriatric parole program as provided by the Parole Board Act.

5 G. As used in this section, "sex offender" means a  
6 person who is convicted of, pleads guilty to or pleads nolo  
7 contendere to any one of the following offenses:

8 (1) kidnapping, as provided in Section 30-4-1  
9 NMSA 1978, when committed with intent to inflict a sexual  
10 offense upon the victim;

11 (2) criminal sexual penetration in the first,  
12 second or third degree, as provided in Section 30-9-11 NMSA  
13 1978;

14 (3) criminal sexual contact of a minor in the  
15 second or third degree, as provided in Section 30-9-13 NMSA  
16 1978;

17 (4) sexual exploitation of children in the  
18 second degree, as provided in Section 30-6A-3 NMSA 1978; [~~or~~]

19 (5) sexual exploitation of children by  
20 prostitution in the first or second degree, as provided in  
21 Section 30-6A-4 NMSA 1978; or

22 (6) child solicitation by electronic  
23 communication device, as provided in Section 30-37-3.2 NMSA  
24 1978. "

25 Section 4. EFFECTIVE DATE. -- The effective date of the

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1 provisions of this act is July 1, 2007.

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